



## INTERIOR BOARD OF INDIAN APPEALS

Cliv Dore v. Eastern Area Director, Bureau of Indian Affairs

31 IBIA 173 (09/15/1997)

Related Board cases:

32 IBIA 187

32 IBIA 264



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

CLIV DORE,  
Appellant

v.

EASTERN AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Docketing Appeal and  
: Vacating Decision  
:  
:  
: Docket No. IBIA 97-160-A  
:  
:  
: September 15, 1997

Appellant Cliv Dore seeks review of a June 30, 1997, decision issued by the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA). The decision was addressed to Richard Doyle as the Governor of the Pleasant Point Reservation of the Passamaquoddy Indian Tribe (Tribe). It discussed Appellant's resignation from the position of Governor of the Pleasant Point Reservation, concluded that actions taken by the Joint Tribal Council were final with regard to tribal governmental matters on both the Pleasant Point and the Indian Township Reservations, and found that the Joint Tribal Council had acted to resolve the question of leadership for the Pleasant Point Reservation.

Appellant contended that the Area Director had improperly interfered with ongoing tribal resolution of an internal dispute. Materials which he filed with his Notice of Appeal indicated that Appellant had filed suit concerning this leadership dispute in the Passamaquoddy Tribal Court, Sipayik People's Court for Indian Township and Pleasant Point Reservations.

By Order dated July 31, 1997, the Board required the parties to provide it with information concerning their positions on several questions. The Area Director's response was received on August 20, 1997. The Joint Tribal Council and Doyle (Doyle) filed a joint response which was received on September 2, 1997. This latter response was timely postmarked on August 29, 1997. No other responses were received.

Although the Area Director states in his response that he is withdrawing his June 30, 1997, decision, the Board treats this as a motion to vacate the decision. Once an appeal is filed with the Board, BIA loses authority to take further action in the matter except to participate in the appeal as a party. See, e.g., Medallion Exploration v. Acting Phoenix Area Director, 28 IBIA 276, 276-77 (1995), and cases cited therein. The Area Director lacked authority to withdraw his decision after the appeal was filed without leave from the Board.

Doyle argues: (1) BIA has authority to make an interim determination of leadership pending final tribal resolution of the matter; (2) the action which Appellant filed in Tribal Court does not dispute the facts on which the Area Director based his decision, but rather is limited to a challenge

to actions of the Pleasant Point Tribal Council in transferring administrative responsibility from Appellant to the Lieutenant Governor and placing Appellant on administrative leave; and (3) based on the Tribal Court's previous interpretation of its own jurisdiction, the Court is unlikely to accept jurisdiction over Appellant's suit and therefore this matter has, in all likelihood, been finally resolved by the Tribe. Doyle argues that the Area Director's June 30, 1997, decision should be affirmed subject to any amendment required by subsequent actions which may be taken by the Tribe.

The Board agrees that it has held that BIA has authority to make an interim determination of tribal leadership pending final tribal resolution of the dispute. See, e.g., LaRocque v. Aberdeen Area Director, 29 IBIA 201 (1996); Bucktooth v. Acting Eastern Area Director, 29 IBIA 144 (1996). See also Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983). However, as the Board noted in Wadena v. Acting Minneapolis Area Director, 30 IBIA 130, 145 (1996), in those cases in which it has approved the issuance of an interim decision, "BIA stepped in and issued a decision only when the situation deteriorated to the point that recognition of some government was essential for Federal purposes, such as maintaining the government-to-government relationship with the tribe or operating [Indian Self-Determination Act] grants or contracts." The issuance of an interim determination of tribal leadership should be considered an unusual action to be undertaken only in emergency situations.

Nothing in the materials before the Board in this case indicates that the tribal government has ceased to function or that the government-to-government relationship cannot be maintained through the remaining tribal council members. Under these circumstances, the Department should be reticent to make any decision concerning the composition of the tribal government until it is clear that all tribal remedies have been exhausted.

Therefore, the Board grants the Area Director's motion to vacate the June 30, 1997, decision.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Eastern Area Director's June 30, 1997, decision is docketed, and that decision is vacated.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge